

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID W. DINGLE,

Plaintiff,

v.

GREGORY C. TESLUK, et al.,

Defendants.

No. 2:20-cv-1878 JAM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants violated his rights under the Eighth Amendment. Presently before the court are plaintiff's objections to the court's findings and recommendations. (ECF No. 12.)

By order dated November 5, 2020 the court screened the complaint. (ECF No. 7.) It found plaintiff's allegations failed to state a claim. The complaint was dismissed with sixty days leave to amend. On January 27, 2021, the undersigned issued findings and recommendations recommending that this action be dismissed for failure to file an amended complaint. (ECF No. 11.) Plaintiff has filed objections. (ECF No. 12.) Therein, he states that a fellow inmate has been assisting him with this case, that inmate has all the materials related to this action, and that he cannot meet with that inmate because inmate movement is restricted due to the COVID-19

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1 pandemic. Plaintiff requests a “postpone[ment] of these proceedings until after the coronavirus
2 threat and [the prison is] back to a normal program.”

3 The court has broad discretion to stay proceedings as an incident to its power to control its
4 own docket. Clinton v. Jones, 520 US. 681, 706 (1997) (citing Landis v. N. Am. Co., 299 U.S.
5 248, 254 (1936)). The party requesting a stay has the burden of establishing its need, id. at 708,
6 and must make out a clear case of hardship or inequity in being required to go forward. Lockyer
7 v. Mirant Corp., 398 F.3d 1098, 1109 (9th Cir. 2005) (quoting Landis, 299 U.S. at 255).

8 Plaintiff has not alleged sufficient facts to support the imposition of an indefinite stay.
9 However, in light of the circumstances the court will vacate the findings and recommendations
10 and grant plaintiff an extension of time to file an amended complaint. The court will further
11 direct the Clerk of the Court to send to plaintiff a copy of the original complaint and the court’s
12 November 5, 2020 screening order.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. The findings and recommendations filed January 27, 2021 (ECF No. 11) are vacated.
15 2. Plaintiff is granted sixty (60) days from the date of service of this order to file an
16 amended compliant that complies with the requirements of the Civil Rights Act, the Federal Rules
17 of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the
18 docket number assigned to this case and must be labeled “First Amended Complaint.”

19 3. Failure to comply with this action will result in a recommendation that this action be
20 dismissed.

21 4. The Clerk of the Court is directed to send plaintiff a copy of the complaint (ECF No. 1)
22 and the court’s November 5, 2020 screening order (ECF No. 7) along with this order.

23 Dated: February 19, 2021



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25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE
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